

1 PAUL A. SHPIRT, ESQ.
Nevada Bar No. 10441
2 DIMOPOULOS INJURY LAW
6671 South Las Vegas Boulevard, Suite 275
3 Las Vegas, Nevada 89119
O: (702) 800-6000
4 F: (702) 224-2114
ps@stevedimopoulos.com
5 *Attorney for Plaintiff*

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 JOEL KANE HOWARD, individually;
9 Plaintiff,

CASE NO.: 2:21-cv-00643-APG-EJY

10 vs.

11 **JOINT PRETRIAL ORDER**

12 UNITED STATES OF AMERICA; DOE
INDIVIDUALS 1-20, inclusive; and ROE
CORPORATIONS 1-20, inclusive,
13 Defendants.

14
15 Plaintiff, JOEL KANE HOWARD, by and through his attorney of record, Paul A. Shpirt, of
16 DIMOPOULOS INJURY LAW; and Defendant, UNITED STATES OF AMERICA, by and through
17 its counsel of record, Virginia T. Tomova, Esq., Assistant United States Attorney, hereby submit the
18 following Joint Pretrial Order pursuant to the requirements of LR 16-3 as follows:

19 **I.**

20 **STATEMENT OF ACTION**

21 **A. NATURE OF ACTION:**

22 This matter arises out of a collision on April 23, 2018, in Las Vegas, Nevada. Plaintiff was
23 operating his bicycle eastbound on Westcliff Drive at the Intersection of Underhill Court. At the same
24 time, Kristopher Pinaula Scharff, operated a 1989 Grumman LLV-A utility vehicle while working
25 for the UNITED STATES OF AMERICA Post Office, and was exiting a private drive, located on the
26 north side of Westcliff Drive. Plaintiff alleges that Mr. Scharff failed to see Plaintiff approaching on
27 his bicycle and struck him, propelling him into the air and off his bicycle. Defendant disputes these
28 allegations and alleges that Plaintiff ran into the Postal vehicle and was responsible for the accident.

DIMOPOULOS
INJURY LAW



B. CLAIMS FOR RELIEF:

PLAINTIFF:

Plaintiff prays for judgment on all claims for relief as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For post-judgment interest as allowed by law;
4. For costs of suit incurred herein; and
5. For such other and further relief as this Court may deem just and proper.

DEFENDANT:

Defendant requests that this Honorable Court:

1. Deny all of Plaintiff's claims with prejudice;
2. Award costs to Defendant; and
3. Provide any other relief that the Court deems just and proper.

C. CONTENTIONS:

PLAINTIFF:

1. That Defendant operated the Defendant's vehicle in a negligent and unsafe manner.
2. Defendant had a duty to operate his vehicle in a safe and reasonable manner and breached this duty when he caused a vehicle collision with Plaintiff's vehicle.
3. That as a direct and proximate result of the negligence and breach by Defendant, Plaintiff suffered personal injuries and general and special damages in an amount in excess of \$75,000.00.

DEFENDANT:

- A. Plaintiff's Complaint fails to state a claim or any claim upon which relief can be granted.
- B. Plaintiff's recovery is limited to the damages recoverable under the FTCA.
- C. Pursuant to 28 U.S.C. § 2675(b), Plaintiff is prohibited from claiming or recovering an amount against the Defendant more than that set forth in a claim presented to the USPS.



1 D. Plaintiff's injuries, damages, and losses, if any, were solely and proximately caused by the
2 negligence, carelessness or recklessness of Plaintiff and/or other third-persons.

3 E. In the alternative, and without admitting any liability, pursuant to NRS § 41.141,
4 Plaintiff cannot recover from Defendant as Plaintiff's fault and negligence in causing the alleged
5 accident is greater than the negligence, if any, of Defendant.

6 F. In the further alternative, and without admitting any liability, pursuant to NRS § 41.141,
7 Plaintiff's fault and negligence in causing the alleged accident must be compared against the fault
8 and negligence, if any, of Defendant, and Plaintiff's recovery, if any, must be diminished in
9 proportion to his fault and negligence in causing the alleged accident.

10 G. Without admitting any liability, Plaintiff is not entitled to any prejudgment interest
11 should he obtain a judgment against Defendant. *See* 28 U.S.C. § 2674.

12 H. Any injuries Plaintiff alleges are not causally related to the occurrence alleged in
13 Plaintiff's Complaint.

14 I. Defendant discharged any duties it may have owed Plaintiff.

15 J. The negligent or otherwise wrongful acts or omissions of Plaintiff and/or others over
16 whom the United States has no control, constitute an intervening and superseding cause and therefore
17 sever any alleged negligence that might be attributable to the United States.

18 K. Plaintiff assumed the risks of operating his bicycle in the manner in which he did.

19 L. Plaintiff is not entitled to attorney's fees. *See* 28 U.S.C. §§ 1346(b)(1); 2671–80.

20 M. Plaintiff's use of fictitiously named defendants is improper. *See Graziose v. Am. Home*
21 *Prods. Corp.*, 202 F.R.D. 638, 643 (D. Nev. 2001).

22 II.

23 STATEMENT OF JURISDICTION

24 Jurisdiction is proper under 28 U.S.C. §1331 as this is a civil action involving the Federal Tort
25 Claims Act, which provides that the federal district courts "shall have exclusive jurisdiction of civil
26 actions on claims against the United States . . . for injury or loss of property, or personal injury or
27 death caused by the negligent or wrongful act or omission of any employee of the Government while
28



1 acting within the course and scope of his office or employment, under the circumstances where the
2 United States, if a private person, would be liable to the claimant in accordance with the law of the
3 place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1). Venue is proper under 28 U.S.C.
4 § 1402(b).

5 **III.**

6 **ADMITTED FACTS**

7 The following facts are admitted by the parties and require no proof: None currently.

8 **IV.**

9 **FACTS NOT ADMITTED**

10 The following facts, though not admitted, will not be contested at trial by evidence to the
11 contrary: None currently.

12 **V.**

13 **ISSUES OF FACT**

14 The following are the issues of fact to be tried and determined at trial:

- 15 1. Whether Defendant had a duty of care to Plaintiff.
- 16 2. Whether Defendant breached that duty of care to Plaintiff; and
- 17 3. Whether Defendant’s breach of duty of care caused damages to Plaintiff.

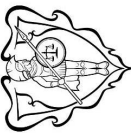
18 **VI.**

19 **ISSUES OF LAW**

20 The following are the issues of law to be to be tried and determined at trial:

- 21 1. Whether Defendant owed Plaintiff a duty of care.
- 22 2. Whether Defendant breached any duty owed to Plaintiff.
- 23 3. Whether Plaintiff can establish that Defendant’s breach, if any, caused Plaintiff’s
24 damages.
- 25 4. Whether the United States is liable to Plaintiff; and
- 26 5. Whether and to what extent Plaintiff’s own negligence caused or contributed to the
27 accident.

28 ///



VII.
EXHIBITS

A. STIPULATED:

The following exhibits are stipulated into evidence in this case and may be so marked by the clerk: None at this time.

B. OBJECTED TO:

As to the following exhibits, the party against whom the same will be offered objects to their admission on the grounds stated:

PLAINTIFF:

1. Las Vegas Metropolitan Police Department Traffic Crash Report, Bates Nos. PLTF000001–PLTF000006;
2. Las Vegas Metropolitan Police Department Witness Statements, Bates Nos. PLTF000007–PLTF000010;
3. Forty-Two (42) color photographs of the subject accident scene taken by Las Vegas Metropolitan Police Department, Bates Nos. PLTF000011–PLTF000052;
4. Medical records and billing from Las Vegas Fire & Rescue, Bates Nos. PLTF000053–PLTF000060;
5. Medical records and billing from UMC of Southern Nevada, Bates Nos. PLTF000061–PLTF000120;
6. Medical records and billing from EMP of Clark UMC McCourt, Bates Nos. PLTF000121–PLTF000139;
7. Billing from Desert Radiology, Bates Nos. PLTF000140;
8. Medical records and billing from Advanced Psychiatric Services, Bates Nos. PLTF000141–PLTF000154;
9. Medical records and billing from ATI Physical Therapy, Bates Nos. PLTF000155–PLTF000258;
10. Medical records and billing from CareNow Urgent Care, Bates Nos. PLTF000259–PLTF000262;



11. Medical records and billing from Clinical Neurology Services, Bates Nos. PLTF000263–PLTF000312;
12. Medical records and billing from Cora Physical Therapy, Bates Nos. PLTF000313–PLTF000337;
13. Medical records and billing from Desert Anesthesiologists, Bates Nos. PLTF000338–PLTF000342;
14. Medical records and billing from Desert Orthopaedic Center, Bates Nos. PLTF000343–PLTF000558;
15. Medical records and billing from Enrico Fazzini, D.O., Bates Nos. PLTF000559–PLTF000571;
16. Medical records and billing from Institute of Orthopaedic Surgery, Bates Nos. PLTF000572–PLTF000643;
17. Medical records and billing from Innovative Pain Care Center, Bates Nos. PLTF000644–PLTF000703;
18. Medical records and billing from Khavkin Clinic, Bates Nos. PLTF000704–PLTF000711;
19. Billing from Kinex Medical Company, Bates Nos. PLTF000712;
20. Medical records and billing from Las Vegas Radiology, Bates Nos. PLTF000713–PLTF000719;
21. Medical records and billing from The Minimally Invasive Hand Institute, Bates Nos. PLTF000720–PLTF000748;
22. Medical records and billing from Louis F. Mortillaro, Ph.D., Bates Nos. PLTF000749–PLTF000922;
23. Medical records and billing from Pain & Injury Chiropractic Center, Bates Nos. PLTF000923–PLTF000943;
24. Medical records and billing from Pueblo Medical Imaging, Bates Nos. PLTF000944–PLTF000950;



25. Medical records and billing from Sierra Surgical, Bates Nos. PLTF000951–PLTF000952;
26. Medical records and billing from SimonMed Imaging, Bates Nos. PLTF000953–PLTF000957;
27. Medical records and supplemental billing from Desert Radiology, Bates Nos. PLTF000958–PLTF000967;
28. Supplemental medical records from Enrico Fazzini, D.O., Bates Nos. PLTF000968–PLTF000969;
29. Medical records from Central Florida Imaging Center, Bates Nos. PLTF000970–PLTF000971;
30. Medical records and billing from Highlands Medical Specialists, Bates Nos. PLTF000972–PLTF001004;
31. Medical records from Orlando Epilepsy Center, Bates Nos. PLTF001005–PLTF001016;
32. Prior medical record from Desert Radiology, Bates No. PLTF001017;
33. Supplemental medical records and billing from Advanced Psychiatric Services of Central Florida, Bates Nos. PLTF001018–PLTF001054;
34. Supplemental medical records and billing from Highlands Medical Specialists, Bates Nos. PLTF001055–PLTF001059;
35. Medical records and billing from Florida Orthopaedic Institute, Bates Nos. PLTF001060–PLTF001119;
36. William S. Muir, M.D.’s records review, Bates Nos. PLTF001125–PLTF001154;
37. William S. Muir, M.D.’s rebuttal expert report, Bates Nos. PLTF001312–PLTF001315;
38. Brian K. Jones, MSBE, PE, ACTAR, CXLT’s rebuttal expert report, Bates Nos. PLTF001316–PLTF001327;
39. Brian K. Jones’ expert file;



40. Trial Testimony of Dr. D. Keith Stolworthy in Tongol v. Jackson, et. al, Case No. A-18-772004-C, Bates Nos. PLTF001328–PLTF001354.

DEFENDANT:

1. Correspondence between Plaintiff’s counsel and USPS, Bates Nos. US000001–US000009.
2. Plaintiff’s SF95 Claim (Bates Nos. US000010–US000587), along with the following records:
 - a. Traffic Crash Report, Bates Nos. US000016–US000028.
 - b. University Medical Center Records, Bates Nos. US000029 –US000070.
 - c. EMP of Clark Records, Bates Nos. US000071–US000072.
 - d. Desert Radiology Records, Bates Nos. US000073–US000074.
 - e. Care Now Urgent Care Records, Bates Nos. US000075–US000079.
 - f. Innovative Pain Care Center Records, Bates Nos. US000080–US000099.
 - g. Desert Orthopaedic Center Records, Bates Nos. US000100 –US000312.
 - h. Pueblo Medical Imaging Records, Bates Nos. US000313–US000316.
 - i. Clinical Neurology Specialists Records, Bates Nos. US000317 –US000357.
 - j. Simon Medical Imaging Records, Bates Nos. US000358–US000369.
 - k. Dr. Mortillaro Records, Bates Nos. US000370–US00485.
 - l. Desert Anesthesiologists Records, Bates Nos. US000486–US000490.
 - m. Khavkin Clinic Records, Bates Nos. US000491–US000499.
 - n. Las Vegas Radiology Records, Bates Nos. US000500–US000505.
 - o. Institute of Orthopedic Surgery Records, Bates Nos. US000506–US000512.
 - p. Kinex Records, Bates Nos. US000513–US000514.
 - q. ATI Physical Therapy Records, Bates Nos. US000515–US000583.
 - r. Dr. Fazzini Records, Bates Nos. US000584–US000587.
3. Printout of Las Vegas Nevada Bicycle Accident Attorney website, Bates Nos. US000588–US000601.
4. Accident Investigation Worksheet (PS Form 1700), Bates Nos. US000602 –US000607.



5. Accident Report (PS Form 1769), Bates Nos. US000608–US000611.
6. Motor Vehicle Accident Report (Standard Form 91), Bates Nos. US000612–US000615.
7. Written statement from Postal Service employee Kristofer Scharff, Bates No. US000616.
8. Written statement from Postal Service employee Rickey Kendrick, Bates No. US000617.
9. Twenty-three (23) photographs, Bates Nos. US000618–US000640.
10. Mr. Scharff’s Accident History, Bates No. US000641.
11. Mr. Scharff’s Employee Everything Report, Bates No. US000642.
12. Enrico Fazzini, D.O., Medical and Billing Records, Bates Nos. US000643–US000658.
13. Las Vegas Radiology, Medical Records, Bates Nos. US000659–US000677.
14. Cora Physical Therapy, Medical and Billing Records, Bates Nos. US000678–US000714.
15. Pain & Injury Chiropractic Center, Medical and Billing Records, Bates Nos. US000715–US000764.
16. Orlando Epilepsy Center, Medical and Billing Records, Bates Nos. US000765–US000781.
17. Clinical Neurology Services, Medical and Billing Records, Bates Nos. US000782–US000903.
18. ATI Physical Therapy–Medical and Billing Records, Bates Nos. US000904–US001013.
19. Emp of Clark UMC McCourt Medical and Billing Records, Bates Nos. US001014–US001037.
20. Kinex Medical Company, Medical Records, Bates Nos. US001038–US001048.
21. Khavkin Clinic, Medical and Billing Records, Bates Nos. US001049–US001059.
22. Pueblo Medical Imaging, Radiology Records, Bates Nos. US001060 –US001061.
23. Las Vegas Radiology, Radiology Records, Bates Nos. US001062 –US001064.
24. Las Vegas Radiology, Billing Records, Bates Nos. US001065–US001066.
25. University Medical Center of Southern Nevada, Medical and Billing Records, Bates Nos. US001067–US001120.



26. University Medical Center of Southern Nevada, Radiology Records, Bates Nos. US001121–US001122.
27. Desert Anesthesiology Consultants, Inc., Medical and Billing Records, Bates Nos. US001123–US001130.
28. ATI Physical Therapy, Medical and Billing Records, Bates Nos. US001131–US001240.
29. The Minimally Invasive Hand Clinic, Medical, Billing and Radiology Records, Bates Nos. US001241–US001269.
30. Desert Orthopaedic Center, Medical, Billing and Radiology Records, Bates Nos. US001270–US001513.
31. Institute of Orthopaedic Surgery - Medical and Billing Records, Bates Nos. US001514–US001574.
32. Pueblo Medical Imaging–Medical and Billing Records, Bates Nos. US001575–US001579.
33. Florida Orthopaedic Institute–Medical Records, Bates Nos. US001580 –US001694.
34. Louis F. Mortillaro, Ph.D. and Associates, Medical and Billing records, Bates Nos. US001695–US001816.
35. Orlando Epilepsy Center - Medical & Billing Records, Bates Nos. US001817–1833.
36. Sierra Surgical–Medical & Billing Records, Bates Nos. US001834 –US001836.
37. Advanced Psychiatric Services Central Florida, LLC, Medical and Billing Records, Bates Nos. US001837–US001886.
38. CareNow Urgent Care, Medical & Billing Records, Bates Nos. US001887–US001904.
39. Desert Radiology, Medical, Radiology & Billing Records, Medical, Radiology and Billing Records, Bates Nos. US001905–US001919.
40. Bank of America, Records Response, Bates No. US001920.
41. Las Vegas Metropolitan Police Department, Event Photographs, and Audio File, Bates Nos. US001921–US001965 & US001922A.
42. Florida Orthopaedic Institute, Billing Records, Bates Nos. US001966 –US001972.
43. SimonMed Imaging, Medical & Radiology Records, Bates Nos. US001973–US001975.



44. Innovative Pain Care Center, Medical & Billing Records, Bates Nos. US001976–2089.
45. SimonMed Imaging, Medical & Billing Records, Bates Nos. US002090–US002108.
46. Las Vegas Fire and Rescue Records, Bates Nos. US002109–US002117.
47. Plaintiff's Answers to Defendant's First Set of Interrogatories.
48. Plaintiff's Responses to Defendant's Requests for Admissions.
49. Plaintiff's Responses to Defendant's Requests for Production of Documents.
50. Expert and Rebuttal Reports of Dr. David N. Alexander, M.D.
51. Expert and Rebuttal Reports of Dr. Mac J. Rosen, M.D.
52. Expert and Rebuttal Reports of Dr. Kevin J. Murphy, M.D.
53. Expert and Rebuttal Reports of Dr. Keith Stolworthy, Ph.D, P.E.

C. ADDITIONAL OBJECTIONS TO EXHIBITS:

The parties reserve the right to object to any and all of the opposing party's exhibits, including, but not necessarily limited to, any prior objections to the untimely production of evidence, as well as the subject matter of their motions in limine.

The parties reserve the right to utilize and/or seek to publish and/or admit into evidence all deposition testimony, all affidavits filed or attached to any motion or pleading in this case, and all responses to discovery from any party in this case for purposes of impeachment.

The parties reserve the right to offer into evidence any exhibit timely and properly disclosed during discovery for the purposes of impeachment and/or rebuttal.

D. ELECTRONIC EVIDENCE:

The parties do not intend to present electronic evidence during trial.

E. DEPOSITIONS:

1. Plaintiff will offer the following depositions: None at this time.
2. Defendant will offer the following depositions: None at this time.

F. OBJECTIONS TO DEPOSITIONS:

1. Defendant objects to plaintiff's depositions as follows: N/A
2. Plaintiff objects to defendant's depositions as follows: N/A



VIII.

WITNESSES

The following witnesses may be called by the parties at trial:

BOTH PARTIES:

1. JOEL KANE HOWARD, Plaintiff
c/o Paul A. Shpirt, Esq.
DIMOPOULOS INJURY LAW
6830 South Rainbow Boulevard, Suite 200
Las Vegas, Nevada 89118
(702) 800-6000
2. Officer Chad Betts; ID 6542 and/or
Sgt. Mike Laythorpe
Las Vegas Metropolitan Police Department
400 S. Martin L. King Boulevard
Las Vegas, Nevada 89106
Phone: (702) 828-3111

PLAINTIFF:

1. William S. Muir, M.D.
Interventional Pain Management & Spine Surgery
653 N. Town Center Drive, Suite 210
Las Vegas, Nevada 89144
Phone: (702) 254-3020
2. Brian K. Jones, MSBE, PE, ACTAR, CXLT
Aperture, LLC
6351 Hinson Street, Suite R
Las Vegas, Nevada 89118
(702) 395-6768

DEFENDANT:

1. Kristofer Scharff, USPS Employee
c/o Skyler Pearson
Assistant United States Attorney U.S. Attorney's Office
501 Las Vegas Blvd. So., Ste. 1100 Las Vegas, NV 89101
Ph. (702) 388-6336
2. Dr. David N. Alexander, M.D.
415 15th Street
Santa Monica, CA 90402
3. Dr. Marc J. Rosen, M.D.
4949 E. Lincoln Dr., Villa #11
Paradise Valley, Arizona 85253
4. Dr. Kevin J. Murphy, M.D.
7300 SW Childs Rd., Suite B



Tigard, OR 97224

5. Dr. Keith Stolworthy, Ph.D., P.E.
P.O. Box 91001
Henderson, NV 89009

6. Rickey Kendrick, USPS Supervisor
c/o Skyler Pearson
Assistant United States Attorney U.S. Attorney's Office
501 Las Vegas Blvd. So., Ste. 1100 Las Vegas, NV 89101
Ph. (702) 388-6336

7. Aileen Anderson, USPS Supervisor
c/o Skyler Pearson
Assistant United States Attorney U.S. Attorney's Office
501 Las Vegas Blvd. So., Ste. 1100 Las Vegas, NV 89101
Ph. (702) 388-6336

IX.

TRIAL DATES

The attorneys for the parties have met and jointly offer these three trial dates:

1. May 5, 2025.
2. May 12, 2025
3. May 19, 2025

It is expressly understood by the undersigned that the court will set the trial of this matter on one of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the court's calendar.

X.

ESTIMATED TRIAL LENGTH

It is estimated that the trial will take a total of 5 days.

DIMOPOULOS INJURY LAW

UNITED STATES ATTORNEY

/s/ Paul A. Shpirt, Esq.

/s/ Virginia T. Tomova, Esq.

Paul A. Shpirt, Esq.
Nevada Bar No. 10441
6671 South Las Vegas Blvd Suite 275
Las Vegas, Nevada 89119
Attorney for Plaintiff

Virginia T. Tomova, Esq.
Assistant United States Attorney
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
Attorneys for Defendant

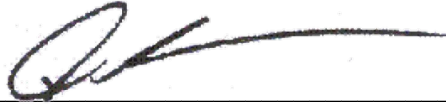


1 **XI.**

2 This case is set for jury trial on the May 19, 2025 trial stack at 9:00 a.m.

3 Calendar call will be held on May 13, 2025 at 9:00 a.m. All in Courtroom 6C

4 IT IS SO ORDERED.

5
6 

7 UNITED STATES DISTRICT JUDGE

8
9 DATED: August 23, 2024

10
11
12
13 DIMOPOULOS
INJURY LAW

